IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.W.P. No.7987 of 1988
Date of Decision:07.03.2007

Rajinder Singh Kooner

.....Petitioner

Vs.

Municipal Corporation, Ludhiana and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- None for the petitioner.

Mr. Satinder Khanna, Advocate for respondent No.1.

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RAJESH BINDAL, J.

In the present petition, the challenge is to the assessment of house tax for the assessment year 1983-84, Annexure P.2 dated 31.12.1983; show cause notice for assessment of house tax for the year 1983-84; Annexure P.3, assessment order dated 31.3.1984; Annexure P.6 dated 27.2.1985, calculation of arrears by respondent No.1 on account of house tax not paid by the petitioner from the assessment year 1976-77 onwards; Annexure P.7 demand notice under Section 137 of the Punjab Municipal Corporation Act, 1976 (for short, `the Act') raising the demand of Rs. 8,343/- as tax, and Rs. 250/- as expenses from the petitioner; Annexure P.11, an intimation dated 28.12.1987 informing the petitioner; that the assessment of house tax for the year 1987-88 will be assessed at annual rental value of Rs. 20,400/- for the year 1983-84; Annexure P.15, dated 23.8.1988, appellate order passed by Commissioner, Patiala Division against the levy of house tax for the year 1987-88 and Annexure P.16 dated 29.8.1988 being a demand notice under Section 137 of the Act for recovery of arrears of Rs. 10,827/- on account of arrears of house tax from 1976-77 onwards.

Primary ground raised in the petition is that while framing the assessment for the year 1983-84, no show cause notice was issued. In response thereto, the respondents have placed on record a copy of the notice

sent to the petitioner for assessment under Section 103-B of the Act on 31.12.1983, which as per the report, could not be served as the family members of the petitioner refused to accept the same on 17.1.984. As per report dated 18.1.1984, the petitioner also refused to accept the notice. Thereafter, on 27.1.1984, it was ordered that the notice be affixed at the premises. The affixation order was carried out on 31.1.1984 and as the petitioner failed to file any objection or take any measure thereafter, the assessment was framed for the year 1983-84. These averments are not controverted by the petitioner by filing replication. It is further found that the petitioner has not denied in the writ petition, the receipt of Annexure P.7, the demand notice issued to him for arrears of house tax for the years 1976-77 onwards. It is also evident from record that on 18.6.1985, the petitioner had deposited a sum of Rs. 4,536/- on account of house tax. As far as assessment year 1987-88 is concerned, annual rental value, assessed for the year 1983-84, was ordered to be continued. In appeal against that, the petitioner failed before the appellate authority on two counts, namely, that the petitioner had failed to deposit the amount of tax demanded which was a pre-condition for entertainment of appeal under Section 143(b) of the Act and further that the petitioner did not have any cause of action to raise the dispute for the assessment year 1987-88 when there was no fresh determination as during the year amount assessed for the year 1983-84 was merely ordered to be continued. The appellate authority had also referred to the location of the house, the accommodation available and the comparative rental value in the locality.

The petitioner has not filed any replication to controvert the allegations made by respondent No.1 in the written statement filed.

Considering the totality of facts and circumstances mentioned above, the present petition deserves to be dismissed as the petitioner is guilty of concealment of material facts from this Court when it is stated in the petition that he was not served with any notice while framing the assessment for the year 1983-84. Even otherwise it is too late in the day to permit the petitioner to challenge the assessment for the year 1983-84 by filing a petition specially when the petitioner had also remedy of appeal against the order of assessment in terms of Section 146 of the Act which he has failed to avail of. As is already noticed above that the petitioner had, in

fact, himself paid a sum of Rs. 4,536/- on 18.6.1985 and thereafter Rs. 1,944/- on 19.6.1988. Keeping this in view, it is difficult to accept that the petitioner was not in knowledge of the assessment framed or the tax determined to be payable by the petitioner as house-tax. Even otherwise, the appeal filed by the petitioner against the assessment for the year 1987-88 was not at all maintainable as the petitioner had failed to deposit the amount of tax assessed and this sole ground was sufficient for non-entertainment of appeal by the appellate authority.

In view of above discussion, the writ petition is dismissed with no order as to costs.

March 07, 2007 **(RAJESH BINDAL)**
renu **JUDGE**